

Patent Application
Attorney Docket No.: 56130.000062
Client Reference No.: 12812RGUS01U

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: :
: Robert J. Arnott : Group Art Unit: 2643
: :
Appln. No.: 09/740,854 :
: Examiner: M. Ramakrishnaiah
Filed: December 21, 2000 :
: Conf. No.: 6534
For: APPARATUS AND METHOD AND :
ESTABLISHING AUDIO AND :
VIDEO CONFERENCING :

Mail Stop Appeal Brief-Patents
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P.O. Box 1450
Alexandria, VA 22313-1450

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REPLY BRIEF

Sir:

This Reply Brief is submitted in reply to the Examiner's Answer, dated June 16, 2004, which responds to the Appellant's Brief, filed May 7, 2004.

I. ISSUES

The Examiner has raised new points of argument in the Examiner's Answer to the Appellant's Brief.

II. NEW ARGUMENTS PRESENTED IN EXAMINER'S ANSWER

The Examiner has presented the following new arguments in the Examiner's Answer to the Appellant's Brief:

(i) The Examiner now argues that Appellant has misinterpreted the Huang reference (U.S. Patent No. 6,148,072) and that Appellant is creating a misleading impression about the Huang reference (see "Response to Argument" on pages 10 and 11 of the Examiner's Answer).

(ii) The Examiner now argues that Appellant has selectively quoted from his specification to promote his argument about a single subscriber line (see "Response to Argument" on page 12 of the Examiner's Answer).

(iii) The Examiner now argues that Huang does not teach away from using a single subscriber line (see "Response to Argument" on page 18-19 of the Examiner's Answer).

(iv) The Examiner now argues that Appellant selectively quotes from the Bremer reference (Pub. No. US2001/0022836A1) to promote his arguments (see "Response to Argument" on page 19 of the Examiner's Answer).

III. REPLY TO NEW ARGUMENTS

Appellant respectfully offers the following in reply to the new arguments raised by the Examiner in the Examiner's Answer to the Appellant's Brief:

(i) The Examiner's allegation that Appellant has misinterpreted the Huang reference and that "Appellant is making

arguments about the Huang reference to create a misleading impression" is improper.

Appellant cited several passages from Huang to illustrate its teaching of voice and video transmissions over **two or more separate telephone lines** (see pages 9-11 of the Appeal Brief). However, the Examiner addresses none of these cited passages. The Examiner simply relies on page 4, lines 10-17 of Appellant's specification to assert that the present application teaches "a similar scheme" as Huang (page 11 of the Examiner's Answer). Even if the Examiner's assertion were correct, similarity alone would not be enough to establish a prima facie case of anticipation. It is axiomatic that anticipation of a claim under [35 U.S.C.] § 102 can be found only if the prior art reference discloses every element of the claim. In re King, 801 F.2d 1324, 1326 (Fed. Cir. 1986). Since no proof has been put forward to show that Huang does teach the use of **a single subscriber line**, the Examiner has failed to carry his burden of establishing a prima facie case of anticipation.

(ii) The Examiner's allegation that "Appellant has selectively quoted from his specification to promote his argument about a single subscriber line" is improper.

Appellant quoted the following passages from the present application as textual support that the claimed invention

contemplates the use of **a single subscriber line** such as a telephone line for transmitting and receiving both voice and video components of a video conferencing session.

In addition, ADSL and G.Lite allow for the use of one connection for the transmission of both voice and video data. Accordingly, although the first connection 115 and second connection 145 are illustrated separately in FIG. 1 ... they may be one in the same when ADSL or G.Lite is used. (Page 9, lines 8-12 of Appellant's specification).

Digital subscriber lines or xDSL technologies use modulation schemes to pack data on to copper wires of the local telephone loop. It should be recognized that the invention may utilize various types of digital subscriber lines, including symmetric digital subscriber lines (SDSL), high-data-rate digital subscriber lines (HDSL), and voice-over digital subscriber lines (VoDSL) for the transmission of video data. (Page 8, line 21 - Page 9, line 5 of Appellant's specification).

Asserting the quoted passages to be "incorrect" (page 12 of the Examiner's Answer), the Examiner points to two paragraphs that immediately precede the above passages:

A first connection 115 interfaces to the video phone appliance 100 to provide a first channel for transmitting voice data to another party via a voice network such as the public switched telephone network (PSTN) ...

A second connection 145 interfaces to the video phone appliance 100 in order to provide a second channel for transmitting video data. The second connection 145 to the video phone appliance may be, include, or interface to a digital subscriber line (xDSL), an Ethernet connection, a synchronous optical network (SONET) connection, a digital T1, T3, E1 or E3 line, or an Integrated Services Digital Network (ISDN) line, to name just a few.

(Page 8, lines 11-19 of Appellant's specification). The Examiner relies on these two paragraphs as evidence that Appellant uses **two "channels/lines"** in a "similar" way as Huang (page 12 of the Examiner's Answer). Without offering any explanation, the Examiner seems to suggest that Appellant's description of using a single subscriber line (Page 9, lines 8-12) contradicts the two preceding paragraphs. It is respectfully submitted that the Examiner fails to consider the present application as a whole by focusing only on selected portions while discounting or ignoring other relevant portions of Appellant's specification.

Further, the Examiner's continued use of the language **"channels/lines"** suggests there is still misunderstanding of the difference between the terms "channel" and "subscriber line." While Huang teaches the use of **two or more telephone lines** for video conferencing, the claimed invention recites voice and video transmissions over **separate channels** of **a same subscriber line**.

(iii) In dismissing Appellant's argument that Huang teaches away from using a single subscriber line, the Examiner refuses to consider the following passage cited from Huang:

[a]lthough POTS lines are the most widely available and least expensive telephone lines, there are disadvantages in using them for videophone communication. The most important disadvantages is

probably the bandwidth limitation, currently at 33.6 kilobits per second (kbps). The effect of this limitation is that image quality and motion speed are less than desirable. A solution proposed by the present inventor, as described in PCT publication number WO 98/17053 [entitled "METHODS AND SYSTEMS FOR CONNECTING MULTIPLE TELEPHONE LINES BETWEEN TWO STATIONS"], is to **use multiple telephone lines** to increase the total bandwidth. As a result, the quality of videophone over POTS could be better than ISDN videophones. (Huang, col. 1, lines 32-43) (emphasis added).

The Examiner dismisses this passage as unrelated to Appellant's claimed invention and therefore gives no explanation. However, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1550 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). The quoted passage offers evidence that Huang considered the bandwidth of a single telephone line too limited for the high demand of videophone communication. Following this rationale, Huang indeed describes the use of multiple telephone lines in this passage and throughout its disclosure. Reading Huang, a person of ordinary skill in the art would be discouraged from using a single telephone line for video conferencing. Therefore, despite the Examiner's quick dismissal, the quoted passage offers clear evidence that Huang teaches away from using a single subscriber line. As confirmed in MPEP § 2145, it is improper to combine

references where the references teach away from their combination. In re Grasselli, 713 F.2d 731, 218 USPQ 769, 779 (Fed. Cir. 1983).

(iv) The Examiner's allegation that Appellant selectively quotes from the Bremer reference is improper.

Appellant quotes Bremer to show that Bremer only contemplates the transmission of the voice and video components of a video conferencing session via **a single data channel** instead of **separate channels (data and voice)** of a subscriber line. Appellant points to this distinction not to attack the Bremer reference individually, as alleged by the Examiner, but to show a lack of suggestion or motivation in Bremer to combine with Huang. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Indeed, the Examiner does not offer any suggestion or motivation from Bremer to support the combination.

IV. CONCLUSION

It is therefore respectfully submitted that the Huang reference does not anticipate the claimed invention, and that the combination of Huang, Bremer and the other prior art references does not render the claimed invention unpatentable

under 35 U.S.C. § 103(a). Thus, it is respectfully submitted that the rejection of all of the pending claims is clearly in error and that the reversal of the rejected claims is in order and is courteously solicited.

Respectfully submitted,

Hunton & Williams LLP

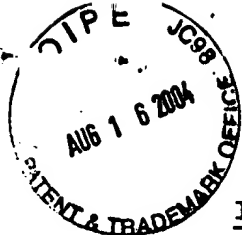
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TRANSMITTAL

Sir:

Submitted herewith is a Reply Brief for the above-identified patent application.

- [X] No additional fee is required.
- [X] Also attached: Return Receipt Postcard.
- [X] The fee is calculated as shown below:

	PRESENT # OF CLAIMS	HIGHEST # PREVIOUSLY PAID FOR	EXTRA CLAIMS	RATE	FEE
Total Claims	24	24	0	x \$18 =	\$.00
Independent Claims	3	3	0	x \$86 =	\$.00
Subtotal					\$.00
Subtract ½ if Small Entity					\$.00
TOTAL FEE DUE					\$.00

[] Please charge Deposit Account No. 50-0206 in the amount of \$.00 for the above-indicated fees. A duplicate copy of this transmittal is submitted herewith.

[X] The Commissioner is hereby authorized to charge any shortage in fees under 37 CFR 1.16 and 1.17 associated with the filing of this communication, or credit any overpayment, to Deposit Account No. 50-0206. This authorization does not include any issue fees under 37 CFR 1.18. A duplicate copy of this transmittal is submitted herewith.

Respectfully submitted,

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